

Tentative Rulings for June 7, 2016
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

15CECG03337	<i>State of California v. West Coast Diesel LLC et al.</i> (Dept. 501)
15CECG03784	<i>Cedillo v. Nunez</i> (Dept. 501)
16CECG01455	<i>City of Fresno v. Mike R. Phillips</i> (Dept. 402)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

16CECG00332	<i>Jenkins v. McDonald's Restaurants, et al.</i> is continued to Thursday, July 7 th , 2016 at 3:00 p.m. in Dept. 403.
16CECG00912	<i>In Re: 1666 Hampton Way, Clovis CA 93611</i> (Dept. 403) is continued to Thursday, June 9, 2016 at 3:00 p.m. in Dept. 403.
13CECG03906	<i>Arteaga v. Fresno Community Regional Medical Center</i> is continued to Tuesday, June 14, 2016, at 3:30 p.m. in Dept. 402
14CECG01472	<i>Gill v. Fresno Community Regional Medical Center</i> is continued to Tuesday, June 14, 2016, at 3:30 p.m. in Dept. 402
14CECG02305	<i>Stevenson v. Fresno Community Regional Medical Center</i> is continued to Tuesday, June 14, 2016, at 3:30 p.m. in Dept. 402
14CECG02360	<i>Riddle v. Community Medical Centers</i> is continued to Tuesday, June 14, 2016, at 3:30 p.m. in Dept. 402
15CECG01565	<i>Maldonado v. Fresno Community Regional Medical Center</i> is continued to Tuesday, June 14, 2016, at 3:30 p.m. in Dept. 402
16CECG00791	<i>Riddle v. Community Medical Centers</i> is continued to Tuesday, June 14, 2016, at 3:30 p.m. in Dept. 402

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

(2)

Tentative Ruling

Re:

In re Rios

Superior Court Case No. 16CECG01246

Hearing Date:

June 7, 2016 (Dept. 402)

Motion:

Petition to Compromise a Minor's Claim

Tentative Ruling:

To grant. Petitioner to submit an order approving the compromise for signature and an order to deposit. Hearing off calendar.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JYH on 6/6/16.
(Judge's initials) (Date)

(17)

Tentative Ruling

Re: ***The State of California v. Liu et al.***
Court Case No. 15 CECG 01185

Hearing Date: June 7, 2016 (Dept. 402)

Motion: Plaintiff's Motion to Compel Further Responses to Requests for
Production of Documents to AMGRO Farm Service, Set One
Plaintiff's Motion to Compel Further Responses to Requests for
Production of Documents to American Grower Seed Co., Set One

Tentative Ruling:

To take off calendar as premature.

Explanation:

On May 4, 2016, plaintiff State of California, by and through the State Board of Public Works ("plaintiff") filed two motions to compel further responses to Requests for Production of Documents, one directed at defendant AMGRO Farm Service, Inc. and one directed at American Grower Seed Company. However, plaintiff failed to first comply with Fresno County Superior Court Local Rule 2.1.17 which provides, in relevant part, that except for motions to compel initial responses to discovery:

[N]o motion under sections 2016.010 through 2036.050, inclusive, of the California Code of Civil Procedure shall be heard in a civil unlimited case unless the moving party has first requested an informal Pretrial Discovery Conference with the Court and such request for a Conference has either been denied and permission to file the motion is expressly granted via court order or the discovery dispute has not been resolved as a consequence of such a conference and permission to file the motion is expressly granted after the conference.

On May 24, 2016, defendants filed an opposition which raised failure to comply with Local Rule 2.1.17 as to sole ground for opposition. On May 25, 2016, plaintiff filed a belated Request for Pretrial Discovery Conference.

The parties will be notified of the Court's ruling on the Request for Pretrial Discovery Conference by a separate order.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JYH on 6/6/16.
(Judge's initials) (Date)

Tentative Rulings for Department 403

Tentative Rulings for Department 501

(30)

Re: ***Khaled Abualrejal v. Shogay Ahmed***

Superior Court No. 15CECG03604

Hearing Date: Tuesday June 7, 2016 (**Dept. 501**)

Motion: (1) Defendants' Demurrer and Motion to Strike

Tentative Ruling:

To **Sustain** the Demurrer for uncertainty to Plaintiff's entire First Amended Complaint. *In all subsequent pleadings, Plaintiff must apply the material facts to each element of each cause of action, not merely reference preceding paragraphs.*

Motion to Strike is ordered off calendar.

Plaintiff is granted 20 days leave to amend. (Cal. Rules of Court, rule 3.1320(g).) The time in which an amended complaint may be filed will run from service by the clerk of the minute order. (Code Civ. Proc., § 472b.)

Explanation:

A complaint must allege facts and not conclusions, and the material facts must be alleged directly and not by way of recital. Furthermore, the essential facts upon which a determination of the controversy depends should be stated with clearness and precision so that nothing is left to surmise. Recitals, references to, or allegations of material facts that are left to surmise are subject to a special demurrer for uncertainty. (*Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 537.)

Chain Letter Pleading

The practice of incorporating all or most prior paragraphs within each cause of action is disfavored, as it tends to cause ambiguity and create redundancy. (*Uhrich v. State Farm Fire & Cas. Co.* (2003) 109 Cal.App.4th 598, 605; *International Billing Services, Inc. v. Emigh* (2000) 84 Cal.App.4th 1175, 1179 [complaint employs the disfavored shotgun or "chain letter" style of pleading wherein each claim for relief incorporates by reference all preceding paragraphs, which often masks the true causes of action].)

Here, Plaintiff employs Chain Letter Pleading. For each cause of action, Plaintiff incorporates every preceding paragraph, makes reference to specific paragraphs, and then recites boilerplate law. The main problem is that Plaintiff's First Amended Complaint incorporates at least 79 paragraphs into each cause of action. This creates ambiguity and redundancy and makes it impossible to determine which facts apply to

which elements. A Demurrer for uncertainty is sustained as to Plaintiff's entire First Amended Complaint.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 6/6/16.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: **Drake v. Rojas**
Court Case No. 16CECG00803

Hearing Date: June 7, 2016 **(Dept. 501)**

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To deny without prejudice, unless counsel can supply an appropriate declaration under penalty of perjury and on personal knowledge as to the relationship of Alexandra Gaudy to the decedent, which he may bring and submit at the hearing. In that event, oral argument must still be requested according to normal procedure, and the minor is excused from appearing.

Explanation:

Counsel's declaration is incompetent to establish facts regarding the relationship of Alexandra Gaudy to the decedent, as he merely states his "understanding" and provides no facts to show he has any personal knowledge. (Evid. Code § 702; *Baustert v. Superior Court* (2005) 129 Cal. App. 4th 1269, 127—Affidavit based on information and belief is hearsay and must be disregarded.) Provided the facts as stated in his declaration are supplied by someone with personal knowledge (or provided Mr. McGlenon supplies facts establishing his own personal knowledge), the court is prepared to grant the petition.

Pursuant to California Rules of Court, Rule 3.1312 and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 6/6/16 .
 (Judge's initials) (Date)

(28)

Tentative Ruling

Re: ***Sanchez-Hubbard v. Fresno Unified School District***

Case No. 14CECG00533

Hearing Date: June 7, 2016 (Dept. 501)

Motion: Petition to Approve Compromise of Disputed Claim (Minor's Compromise).

Tentative Ruling:

To grant, subject to the following:

The Court will sign the submitted form MC-355 and will mark box 5.b, allowing the minor to have access to the settlement proceeds upon the minor's 18th birthday, unless the parties object.

After the hearing, and assuming the form is signed as stated above, Counsel is to forward to the depository a Receipt and Acknowledgment on Judicial Council form MC-356, along with a signed copy of the Order to Deposit. Once the depository has signed the Receipt, counsel shall file the completed Receipt with the court, within 30 calendar days of the date of the hearing.

Explanation:

Counsel has largely addressed the issues raised by the Court in its order of April 14, 2016. The Court notes that the paperwork filed does not include a provision that the funds can be released to the minor as of the date of his 18th birthday. Otherwise, the paperwork has been adequately filled out and the Court will grant the Petition.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 6/6/16.
(Judge's initials) (Date)

Tentative Rulings for Department 502

(20)

Tentative Ruling

Re: ***Gonzalez et al. v. Vemma Nutrition Company et al.***
Case No. 14CECG00134
Alonzo et al. v. Vemma Nutrition Company et al.
Case No. 14CECG01023
Martinez v. Vemma Nutrition Co. et al.
Case No. 14CECG01715
Smith v. Union Pacific Railroad et al.
Case No. 14CECG02314

Hearing Date: **June 7, 2016 (Dept. 502)**

Motion: Vemma Nutrition's Motion to Bifurcate

Tentative Ruling:

To deny. (Code Civ. Proc. §§ 598, 1048(b).)

Explanation:

Under Code Civ. Proc. § 598, court is given great discretion in regard to the order of issues at trial:

The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order...that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case....

Similarly, Code Civ. Proc. § 1048(b) specifies the court's discretion in regard to bifurcating issues for separate trial:

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action ... or of any separate issue or of any number of causes of action or issues.

These sections are generally relied upon for bifurcation, usually to try issues of liability before damages issues. "It serves the salutary purpose of avoiding wasting time and money, and prevents possible prejudice to a defendant where a jury might look past liability to compensate a plaintiff through sympathy for his or her damages" (Rylaarsdam & Edmon (The Rutter Group 2013) *California Practice Guide: Civil Procedure Before Trial*, "Case Management & Trial Setting" § 12:414.) The decision to

grant or deny a motion to bifurcate issues, and/or to have separate trials, lies within the court's sound discretion. (See, *Grappo v. Coventry Financial Corp.* (1991) 235 Cal.App.3d 496, 503-504.)

Here, Vemma has not demonstrated that bifurcating one discrete liability issue (Smith's agency and employment) from other liability and damages issues as to one of multiple defendants would either promote judicial economy and efficiency, or avoid undue prejudice.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DSB **on** 6/6/16.
(Judge's initials) (Date)

(6)

Tentative Ruling

Re: ***Frias v. Community Behavioral Health Center***
Superior Court Case No.: 14CECG01780

Hearing Date: June 7, 2016 (**Dept. 502**)

Motion: By Defendant Community Behavioral Health Center to compel Plaintiff Rudy Archuleta's responses to form interrogatories (set one), special interrogatories (set one), and requests for production of documents (set one), and for monetary sanctions

Tentative Ruling:

To deny, and to deny all sanctions requests.

The Court notes that the moving party scheduled one motion and paid for one motion. In actuality, the moving papers consist of two motions [one for the interrogatories, one for the document requests] combined into one set of papers. As previously noted and ordered in this Court's October 15, 2015, minute order, in the future, the moving attorney was and is to properly calendar and pay for the proper amount of motions. Moving party shall pay an additional filing fee of \$60.00 to be due and payable to the court clerk within 10 days of service of the minute order by the clerk. (Gov. Code, § 70617, subd. (a).)

The Court has, in its discretion, refused to consider the late-filed opposition. (Cal. Rules of Court, rule 3.1300(d).)

Explanation:

For a motion to compel initial responses to discovery, all that need be shown in the moving papers is that a set of interrogatories was properly served on the opposing party, that the time to respond has expired, and that no response of any kind has been served. (*Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.)

The declaration of Michael Hergenroether does not demonstrate personal knowledge that the discovery was propounded, or that responses were or were not received. This is further demonstrated by the reply declaration of Bruce Berger, who says that he meant Mr. Hergenroether to proceed only as to the form interrogatories.

The Court encourages the parties to resolve this matter informally without further necessity for court intervention.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DSB **on** 6/6/16.
(Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***Andrew Warren v. Pam Ahlin, Cliff Allenby, Kevin Heart, Audrey King, Brandon Price and Jack Carter***
Superior Court Case No. 15 CECG 00978

Hearing Date: June 7, 2016 (**Dept. 502**)

Motion: By Plaintiff seeking a protective order

Tentative Ruling:

To take the motion off calendar on the grounds that it has been rendered moot.

Explanation:

On March 16, 2015, Plaintiff, an involuntary resident at Coalinga State Hospital filed a complaint seeking damages for injuries he received when another involuntary resident, Robert Johnson, attacked him on December 12, 2014. On May 2, 2016, Plaintiff filed a motion seeking a protective order to prevent his deposition. See Declaration of Warren at ¶ 1. On May 23, 2016, Defendants filed opposition. According to the opposition, Plaintiff's deposition was taken on April 29, 2016. See Declaration of Phillips at ¶ 3. Therefore, the motion has been rendered moot.

Pursuant to California Rules of Court, Rule 3.1312, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DSB on 6/6/16.
(Judge's initials) (Date)

Tentative Rulings for Department 503

(23)

Tentative Ruling

Re: **Larry D. Graham v. City of Fresno**
Superior Court Case No. 15CECG03870

Hearing Date: Tuesday, June 7, 2016 (**Dept. 503**)

Motion: Defendant City of Fresno's Demurrer to Plaintiff Larry D. Graham's Complaint

Tentative Ruling:

To take off calendar Defendant City of Fresno's demurrer to Plaintiff Larry D. Graham's complaint. (Code Civ. Proc., § 430.41, subd. (a).)

The Court orders Plaintiff's and Defendant's counsel to meet and confer in person or by telephone as required by Code of Civil Procedure section 430.41, subdivision (a). If the parties do not reach an agreement resolving the objections raised in the instant demurrer, Defendant may obtain a new hearing date for the instant demurrer. If a new hearing date is obtained, Defendant must file a new meet and confer declaration as required by Code of Civil Procedure section 430.41, subdivision (a)(3), at least 16 court days, plus any additional time as required for service of the declaration, before the new hearing date. If, after meeting and conferring, Plaintiff agrees to amend his complaint, Plaintiff and Defendant may file a stipulation and order for leave to file a first amended complaint, which will be granted by the Court without need for a hearing. (Cal. Rules of Court, rule 3.1207(4); Superior Court of California, County of Fresno Local Rules, Rule 2.7.2.)

Explanation:

On March 30, 2016, Defendant City of Fresno ("Defendant") filed a demurrer to Plaintiff Larry D. Graham's ("Plaintiff") complaint pursuant to Code of Civil Procedure section 430.10, subdivisions (e) & (f).

In order to demonstrate that Defendant complied with the meet and confer requirement of Code of Civil Procedure section 430.41, subdivision (a) before filing its demurrer, Defendant has filed the declaration of its counsel, Stephanie M. Snyder. Ms. Snyder's declaration states that on, February 5, 2016, she sent a letter to Plaintiff's counsel setting forth the deficiencies in Plaintiff's complaint and that she sent further meet and confer letters and e-mails to Plaintiff's counsel on February 29, 2016, March 3, 2016, March 16, 2016, March 21, 2016, and March 22, 2016. (Declaration of Stephanie M. Snyder, ¶¶ 4-10 and Exhibits A-G.) However, since Code of Civil Procedure section 430.41, subdivision (a) requires that the meet and confer process be conducted "in person or by telephone[.]" Defendant has failed to establish that it sufficiently met and

conferred with Plaintiff before filing its demurrer as required by Code of Civil Procedure section 430.41, subdivision (a).

Accordingly, the Court takes the hearing on Defendant's demurrer off calendar. The Court orders Plaintiff's and Defendant's counsel to meet and confer in person or by telephone as required by Code of Civil Procedure section 430.41, subdivision (a).

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: A.M. Simpson **on** 6/6/16 .
(Judge's initials) (Date)